

# **EXHIBIT 1**

## **FILED UNDER SEAL**

**In the Matter Of:**

*In Re: Pork Antitrust Litigation*

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***MICHAEL WILLIAMS, PH.D.***

*June 21, 2022*

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

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IN RE: ) No. 0:18-cv-01776-JRT-HB  
\_\_\_\_\_)  
PORK ANTITRUST LITIGATION )  
\_\_\_\_\_)  
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VIDEOTAPED DEPOSITION of  
MICHAEL A. WILLIAMS, PH.D.  
- CONDUCTED BY VIDEOCONFERENCE -  
Tuesday, June 21, 2022  
8:01 a.m. Pacific Daylight Time

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1 I'm getting at. Are you assuming that the  
2 defendants used each of the alleged mechanisms in  
3 each year of the alleged conspiracy?

4 MR. FINLEY: Objection, form, and on the  
5 basis of expert stipulation.

6 A. Well, again, just coming back to the first  
7 sentence in Paragraph 12, I have assumed that "For  
8 the purpose of estimating overpayments, if any,  
9 caused by the Defendants' alleged conspiracy," I  
10 have assumed, as any damage expert must, that the  
11 allegations in the complaint are true.

12 So obviously the complaint speaks for  
13 itself about what the allegations are. My report  
14 doesn't contain a specific statement about the  
15 question you just raised.

16 But if it would be considered as part of  
17 the allegations in the complaint pertaining to the  
18 alleged conspiracy, then again, I have, as any  
19 damage expert must, assumed for purposes of  
20 calculating overpayments that those allegations  
21 are correct.

22 Q. For purposes of calculating overpayments  
23 in 2016, what conduct did you assume defendants  
24 engaged in that impacted prices that year?

25 MR. FINLEY: Objection, lack of

1 foundation.

2 A. Yeah. So my overcharge regression doesn't  
3 have a specific overcharge for 2016.

4 It has -- as you mentioned earlier, it has  
5 a dummy variable that answers the question of  
6 whether or not there is or is not a statistically  
7 significant difference between actual prices and  
8 but-for prices over the period January 2009 to  
9 June 2018.

10 So my report doesn't offer a specific  
11 opinion on the subject of your question.

12 Q. Your report doesn't offer a specific  
13 opinion on whether there was an overcharge in 2015  
14 either. Correct?

15 A. Yeah.

16 MR. FINLEY: Hold on. Objection, you may  
17 have mischaracterized prior testimony.

18 A. My report does not offer different  
19 overcharge estimates for different years within  
20 the damages period.

21 Q. It's also true your report doesn't offer  
22 an overcharge estimate for the period June of 2014  
23 through June of 2018. Correct?

24 MR. FINLEY: Same objection.

25 A. It does not offer a separate estimate of

1 any alleged -- of any possible overcharge,  
2 assuming any existed. It doesn't offer a specific  
3 estimate of an overcharge in that time period.  
4 That is correct.

5 Q. And you're not making any assumptions  
6 about defendants' actual conduct between June  
7 of 2014 and June of 2018 other than what's  
8 specifically stated in the complaint. Correct?

9 MR. FINLEY: Objection, form.

10 A. Your question was a little vague.

11 But again, I'll just come back again to  
12 the first sentence in Paragraph 12. "For the  
13 purpose of estimating overpayment, if any, caused  
14 by the Defendants' alleged conspiracy."

15 And that conspiracy is alleged to have  
16 existed between -- at least the damages, between  
17 January 2009 and June 2018.

18 And I have -- as I've said several times  
19 now, I have assumed, as any damage expert must,  
20 that the allegations in the complaint are true.

21 Q. Yeah. And so that's what I'm trying to  
22 get at. So for 2016, just to pick a year, what  
23 are you assuming the defendants did that then led  
24 to the overcharge you purport to measure?

25 MR. FINLEY: Objection, asked and

1 answered, lack of foundation.

2 A. Yeah. I'm assuming that in 2016 the  
3 defendants engaged in the conduct that's alleged  
4 in the complaint as it relates to conduct that  
5 allegedly supported the claimed conspiracy.

6 Q. Are you assuming that all decreases in sow  
7 inventory between January of 2009 and June of 2018  
8 were a result of the alleged conspiracy?

9 MR. FINLEY: Hold on. And objection,  
10 form, also on the basis of expert stipulation.  
11 This is something possibly considered, not  
12 necessarily relied on.

13 A. My report doesn't offer such an opinion.  
14 My report doesn't make such. It doesn't have a  
15 statement about that.

16 Q. Are you assuming that all decreases in hog  
17 production between January of 2009 and June  
18 of 2018 were a result of the conspiracy?

19 MR. FINLEY: Same objection.

20 A. Again, the -- I mean, the complaint speaks  
21 for itself. So I'm assuming that the allegations  
22 in the complaint are true as it pertains to those  
23 allegations that are relevant to the alleged  
24 conspiracy.

25 I don't specifically recall right now if

1 Paragraphs 70 through 76. But in particular, to  
2 Table 2 on page 37, which reports the "U.S. Daily  
3 Hog Slaughter Capacity, 2009-2020, by Company,"  
4 and separates the defendants from others and  
5 reports defendants' market share in the last row  
6 of the table.

7 Q. As measured by hog slaughter capacity.  
8 Correct?

9 A. That is correct.

10 Q. What were defendants' market shares for  
11 hog production during these years?

12 A. I don't believe that's contained in my  
13 report. And the reason would be, if you look at  
14 Paragraph 71 and in particular the article by my  
15 former colleague Greg Werden, I believe that the  
16 capacity provides -- for antitrust purposes  
17 provides a better estimate of market  
18 concentration.

19 Q. I get that. I'll sort of take that point  
20 for now as it relates to pork processing.

21 My question is upstream for hog  
22 production. Your report contains no analysis of  
23 defendants' market shares in the upstream market  
24 for hog production. Correct?

25 A. I don't recall that.



1 Q. Back to the phrase "upstream vertical  
2 control" as you use it in your report. Does that  
3 mean control about -- control over decisions about  
4 sow inventories?

5 MR. FINLEY: Objection, form.

6 A. Well, it means what I've stated in  
7 Paragraphs 37 through 55. So that's -- you asked  
8 me earlier where have I discussed issues that  
9 relate to upstream vertical control. And the  
10 answer is in Paragraphs 37 through 55.

11 Q. And those paragraphs don't say anything  
12 about control over sow inventory.

13 So is it fair to say you are not opining  
14 that defendants exercised control over  
15 nondefendants' decisions about sow inventories?

16 MR. FINLEY: Objection, form.

17 A. I'm not going to take the time right now  
18 to read everything in 37 through 55.

19 I don't recall those paragraphs  
20 specifically talking about the issue you're  
21 discussing right now. So I'd say -- assuming  
22 that's correct, I would say my report doesn't  
23 offer an opinion.

24 Q. And then same question about how many hogs  
25 to produce.

1 Is it fair to say your report contains no  
2 opinion that defendants controlled nondefendant  
3 companies' decisions about how many hogs to  
4 produce?

5 MR. FINLEY: Objection, form.

6 A. I don't recall my report offering an  
7 opinion on that.

8 Q. Is it fair to say that none of your  
9 opinions turn on whether the defendants actually  
10 controlled a majority of U.S. hog production  
11 between 2009 and June of 2018?

12 A. Well, the -- you asked me earlier where  
13 was the discussion of upstream vertical control,  
14 and my answer was Paragraphs 37 through 55.

15 So those paragraphs discuss facts related  
16 to, for example, the changing vertical nature of  
17 the industry over time. So I would say that  
18 unless -- these are just factual statements that  
19 I've made about the industry background. I'm not  
20 aware of any errors in them right now. If there  
21 were, I'd want to correct them.

22 Q. I guess what I'm trying to get at is what  
23 you're assuming and what you're opining on.

24 Do your opinions turn on whether or to  
25 what extent defendants controlled the number of

1 sows in production at any point in time between  
2 2009 and June 2018?

3 A. Well, the opinions that are expressed in  
4 Paragraphs 37 through 55, to the extent that they  
5 cover that, again, these are my opinions based on  
6 my understanding of the facts of the industry as  
7 it pertains to the consolidation and  
8 specialization of farming operations and as it  
9 pertains to hog farming and the fact that hog  
10 farming and hog packing have become increasingly  
11 vertically integrated.

12 As I said, these -- I'm not aware of any  
13 errors in these paragraphs on industry background.  
14 If there were, I'd certainly want to correct them.

15 Q. Let's just take a look at maybe a few  
16 examples. Before we get into the paragraphs you  
17 were discussing, if you could just turn back to  
18 Paragraph 24, which is on page 12.

19 You can read the whole paragraph, if you  
20 want. I'm just going to ask you about the last  
21 sentence.

22 A. Sure. If you could just give me a moment.

23 Q. Absolutely.

24 A. Yes. I've read the paragraph.

25 Q. In the last sentence you say, "Because of

1 their high degree of vertical integration (either  
2 by ownership or by contract), pork packing and  
3 processing firms are also referred to as pork  
4 integrators."

5 Did I read that correctly?

6 A. I believe so.

7 Q. What do you mean by "vertical  
8 integration"?

9 A. Well, it's described right above. In the  
10 sentence kind of halfway down the paragraph, it  
11 starts, "First, due to vertical integration, many  
12 packers now own the hog farms that supply their  
13 packing operations. Second, independently owned  
14 hog farms now primarily operate under long-term  
15 contracts with packers to which they supply  
16 finished hogs directly."

17 So those would be two examples of vertical  
18 integration.

19 Q. So my client, Seaboard, over the years has  
20 had contracts to buy hogs from Prestage, which is  
21 one of the companies I asked you about before.

22 Assuming that that's true, assuming my  
23 representation is true, in your view, does that  
24 mean Seaboard is vertically integrated with  
25 Prestage?

1 MR. FINLEY: And objection, scope.

2 A. If I understand your representation,  
3 Seaboard doesn't own Prestage. So I would say  
4 they're not vertically integrated in the sense  
5 that's described in the sentence that I read a  
6 moment ago that begins, "First, due to vertical  
7 integration, many packers now own the hog farms  
8 that supply their packing operations."

9 But it sounds like, if I understand your  
10 representation, you're saying that there is a  
11 contract -- I don't know if it's short-term,  
12 long-term, but you're saying there is a contract  
13 or contracts between Seaboard and Prestage.

14 And so that's a kind of vertical  
15 integration. It's a contractual vertical  
16 integration. It's not an ownership vertical  
17 integration.

18 Q. I suppose to understand the rights and  
19 obligations Seaboard and Prestage would have  
20 relative to each other, you'd have to read the  
21 contract. Right?

22 MR. FINLEY: Objection, calls for a legal  
23 conclusion, calls for speculation.

24 A. Yeah. I haven't -- I'm not an attorney.  
25 I'm not -- my report doesn't offer any opinions

1 about the contractual relationship between  
2 Seaboard and Prestage.

3 Q. You're not opining that by virtue of that  
4 contractual relationship Seaboard was able to  
5 control how many sows Prestage maintained in its  
6 sow farms. Correct?

7 MR. FINLEY: Objection to form.

8 A. My report does not offer such an opinion.

9 Q. And your report doesn't offer an opinion  
10 that, to stick with this example, Seaboard by  
11 virtue of its contract with Prestage was able to  
12 control how many hogs Prestage produced at any  
13 point in time. Correct?

14 MR. FINLEY: Objection to form.

15 A. My report doesn't offer such an opinion.

16 Q. Stepping outside of that example, it's  
17 also true your report doesn't offer any opinion  
18 that any defendant by virtue of a contract with an  
19 independent producer was able to control how many  
20 sows that producer maintained in its sow farms.  
21 Correct?

22 MR. FINLEY: Objection, vague, ambiguous.

23 A. I don't recall my report offering such an  
24 opinion.

25 Q. And your report also doesn't offer an

1 opinion that any defendant by virtue of a contract  
2 with an independent producer was able to control  
3 how many hogs that independent producer raised.  
4 Correct?

5 MR. FINLEY: Objection, form, vague,  
6 ambiguous.

7 A. Yeah. I don't recall my report offering  
8 such an opinion.

9 Q. Would you turn to Paragraph 42 of your  
10 report. That's on page 19.

11 A. Yes, sir. I'm there.

12 Q. It says in 2009, in the last sentence,  
13 "130 farms that had 50,000 or more pigs accounted  
14 for 56.7% of the nationwide inventory."

15 Did I read that right?

16 A. Well, you started in the middle of the  
17 sentence.

18 Q. Yeah. Let me break it up.

19 So this paragraph refers to information  
20 about 2009. Correct?

21 A. Yes, sir.

22 Q. And the last sentence reads, "On the other  
23 hand, 130 farms that had 50,000 or more pigs  
24 accounted for 56.7% of the nationwide inventory."

25 Did I read that correctly?

1 A. You did.

2 Q. Do you know about how many of these 130  
3 farms were owned by defendants?

4 MR. FINLEY: Objection, form.

5 A. I don't -- my report doesn't offer that  
6 opinion. I don't recall it right now.

7 Q. Do you have just a ballpark? Do you know  
8 if it was 10 farms versus 120 farms?

9 MR. FINLEY: Well, objection on the basis  
10 of the expert stipulation, asking him about  
11 knowledge, preliminary work product, these kinds  
12 of things here.

13 A. I don't recall.

14 Q. If you'd turn to Paragraph 47. It's on  
15 page 21. And then Figure 4, which is on the next  
16 page.

17 Paragraph 47 reads, "According to the  
18 USDA's Agricultural Resource Management Survey  
19 (ARMS), by 2020 the share of hog production  
20 operating under contract increased to nearly 70%  
21 as shown in Figure 4 below."

22 Did I read that correctly?

23 A. I believe so.

24 Q. And the paragraph above, in Paragraph 46  
25 there's a reference to two different types of



1 given Defendants a significant degree of control  
2 over hog farming production."

3 Did I read that right?

4 A. I believe so.

5 Q. And what do you mean by "significant  
6 degree of control"?

7 A. Well, it would be the -- again, this would  
8 be the discussion generally in 37 through 55,  
9 particularly in 44 through 55.

10 But that the graph shows a substantial  
11 increase in U.S. hog production operating under  
12 contract. And so that's the graph that I was  
13 referring to when I wrote the sentence that  
14 appears -- the first sentence in 48.

15 Q. And just to be clear, sitting here today,  
16 you don't know whether the graph in Figure 4 is  
17 measuring contracts between defendants and third  
18 parties exclusively or if it also includes  
19 contracts between nondefendant hog producers and  
20 the hog farmers?

21 MR. FINLEY: Objection, form, compound.

22 A. Yeah. I would have to go back and  
23 double-check the source.

24 Q. And when you say "significant degree of  
25 control over hog" . . . "production," just to make

1 sure I understand this correctly, you're not -- by  
2 "significant degree of" -- let me withdraw that  
3 and start over.

4 By "significant degree of control over hog  
5 farming production," you do not mean control over  
6 nondefendants' decisions about how many sows to  
7 have on their sow farms. Correct?

8 MR. FINLEY: Objection, form.

9 A. I don't recall my report offering an  
10 opinion about that.

11 Q. And it's also the case that "significant  
12 degree of control over hog farming production"  
13 does not mean defendants have control over  
14 nondefendants' decisions about how many hogs to  
15 raise. Correct?

16 MR. FINLEY: Objection, form.

17 A. Yeah. Again, I don't specifically recall  
18 my report offering an opinion about that.

19 Q. Let's take Tyson as an example, if you  
20 could turn to Paragraph 52.

21 Paragraph 52 reads, "In 2017, Tyson  
22 reported that the 'majority of our live hog supply  
23 is obtained through various procurement  
24 relationships with independent producers.'"

25 Did I read that right?

1 A. I believe so.

2 Q. Did you, for purposes of forming your  
3 opinions in this case, rely on any of Tyson's  
4 contracts with outside hog producers? Sorry. Let  
5 me strike that.

6 Did you, for purposes of your opinions in  
7 this case, rely on any of Tyson's contracts with  
8 independent producers?

9 MR. FINLEY: Objection, form.

10 A. I'm not sure if I understand the question.

11 I mean, the sentence that you read in  
12 Paragraph 52 is a statement about -- well, it's a  
13 quote from Tyson about their contractual  
14 relationships with independent producers.

15 Q. Okay. I'm asking -- well, let me ask a  
16 simpler question.

17 Did you review any of Tyson's contracts  
18 with independent producers?

19 MR. FINLEY: And objection based on the  
20 expert stip to the extent this is considered but  
21 not relied upon.

22 So you may answer about whether rely upon,  
23 not whether just considered.

24 A. My report doesn't rely on any such  
25 contracts.

1 Q. Are you aware of any instance in which  
2 Tyson instructed an independent producer to grow  
3 fewer hogs?

4 MR. FINLEY: Same objection.

5 A. I don't believe my report contains --  
6 offers such an opinion.

7 Q. For any defendants, does your report offer  
8 an opinion -- well, let me restart.

9 Does your report offer an opinion that any  
10 defendants instructed an independent producer to  
11 grow fewer hogs?

12 MR. FINLEY: Objection, form.

13 A. I don't recall that opinion being in my  
14 report.

15 Q. Does your report offer an opinion that any  
16 defendant instructed an independent producer to  
17 forgo a contemplated expansion?

18 MR. FINLEY: Objection, form.

19 A. I don't recall my report offering such an  
20 opinion.

21 Q. Are you relying on any of the marketing  
22 contracts between any defendant and any  
23 independent, let me say, nondefendant hog producer  
24 for your opinions in this case?

25 MR. FINLEY: Objection, form.

1 A. I don't recall that.

2 You know, the -- as I'm sure you're aware,  
3 the documents I have relied on are listed in  
4 Appendix II. But I don't specifically recall such  
5 a contract being in Appendix II.

6 Q. Can you identify any instance between 2009  
7 and June of 2018 where a defendant prevented an  
8 independent hog producer from growing more hogs?

9 MR. FINLEY: And objection on the basis of  
10 the expert stip to the extent this is asking for  
11 materials considered but not relied upon.

12 And so you can answer to the extent you  
13 relied on these materials.

14 A. Yeah. I don't believe my report relies on  
15 such materials. I don't recall that.

16 Q. And you're not willing to testify whether  
17 you're aware of any such instance?

18 MR. FINLEY: Same objection, same  
19 instruction.

20 A. Yeah. I'll answer the same way. My  
21 reports doesn't rely on any such evidence.

22 Q. And so is it fair to say that none of your  
23 opinions turn on whether any defendant ever  
24 instructed any nondefendant hog producer to grow  
25 fewer hogs?

1           A. Well, as we've talked about on several  
2 occasions now, the first sentence of Paragraph 12  
3 says, "For the purposes of estimating  
4 overpayments, if any, caused by Defendants'  
5 alleged conspiracy, I have assumed the allegations  
6 in the Complaint are true."

7           Again, that's what any damage expert is  
8 obligated to do.

9           And then there are two regressions in my  
10 report: One is an overcharge regression, and one  
11 is a production regression.

12           And those regressions ask whether or not  
13 given the, as you said, nonconspiratorial factors,  
14 in particular supply and demand factors, whether  
15 or not in the output regression whether or not  
16 actual output is lower than but-for output, and  
17 then in the overcharge regression, whether or not  
18 actual prices exceed but-for prices.

19           Again, there's no assumption that there's  
20 any difference between actual output and but-for  
21 output, and there's no assumption that there's any  
22 difference between actual prices and but-for  
23 prices.

24           It's an empirical question, which is  
25 investigated in the regression -- in the

1 production regression in Table 3 and the  
2 overcharge regression in Table 4.

3 Q. And none of your regressions estimates  
4 what the volumes of export sales would have been  
5 but for the alleged conspiracy. Correct?

6 MR. FINLEY: Objection, form.

7 A. That is correct. There is no -- as I said  
8 earlier, there's no export variable in the  
9 overcharge regression; neither is there an export  
10 variable in the production regression.

11 Q. Let's take a look at page 29 of your  
12 report, Figure 6. This figure is titled "Total  
13 U.S." . . . "Net Exports and Net Exports as a  
14 Share of Production, 2000-2020 (by Weight)."

15 Did I get that right?

16 A. No. You actually left out the most  
17 important word. You left out the word "Pork."  
18 But otherwise, you got it right.

19 Q. Okay. I'll own that one.

20 This figure portrays "Total U.S. Pork Net  
21 Exports and Net Exports as a Share of Production,  
22 2000-2020 (by Weight)." Correct?

23 A. I believe that is correct.

24 Q. For purposes of this figure, how did you  
25 calculate net exports?

1           A. Well, I would -- I'd want to double-check  
2     the source. And as I'm sure you're aware, we gave  
3     you all of the backup for our report. So I would  
4     just want to double-check those things.

5           But my recollection is it would be exports  
6     minus imports.

7           Q. And the exports and imports you're  
8     referring to would be of all pork products.  
9     Correct?

10          A. Again, the answer is an empirical one. It  
11     would be contained in that source. That's what  
12     the title to the table says. That would be --

13          Q. Do you recall -- I'm sorry. Go ahead and  
14     finish.

15          A. I'm sorry. I was just saying that's what  
16     the title -- the title to the table says "Pork."  
17     It doesn't specify any particular pork products.  
18     But again, the source would answer the question.

19          Q. Do you know, sitting here today, whether  
20     this figure -- whether the net exports depicted in  
21     this figure include exports of products that fall  
22     outside of the class definition?

23          A. I don't recall that right now. I would  
24     have to double-check the source.

25          Q. So sitting here today, you don't know



1 Illinois Brick states, and then using the  
2 pass-through information and other information  
3 that's discussed in Sections IV and V to come up  
4 with the estimate of damages, which is in  
5 Table 12.

6 But those discussions don't specifically  
7 rely on Figure 6.

8 Q. You're not opining that the members of the  
9 commercial and institutional indirect purchaser  
10 class paid higher prices for pork as a result of  
11 increases in exports?

12 MR. FINLEY: And objection, vague,  
13 ambiguous, calls for speculation, calls for a  
14 legal conclusion.

15 A. Yeah. We talked earlier about the  
16 overcharge regression, which is in a sense the  
17 beginning of the damage calculation.

18 And there is no variable in that  
19 overcharge regression which appears in Table 4,  
20 there is no variable in there for exports, so  
21 there's not -- certainly no direct connection  
22 between Figure 6 and the estimated overcharge.

23 And then as I mentioned a moment ago, the  
24 actual calculation of damages, which of course  
25 goes through a number of steps to get to the

1 relevant volume of commerce, is in a sense  
2 affected by exports, but it's really looking at  
3 the domestic sales of the relevant pork products.

4 Q. Are you offering an opinion that increases  
5 in exports resulted in higher prices for members  
6 of the class during the period 2009 to June 2018?

7 MR. FINLEY: Objection to form, vague,  
8 ambiguous.

9 A. No. I don't believe my report says that.  
10 Again, as we've talked about, Table 4 does not  
11 have a variable for exports.

12 Q. Let's take a look at Paragraph 62 of your  
13 report, which is on page 31.

14 A. Yes. I'm here.

15 Q. And this paragraph -- well, the header  
16 above this paragraph is "Events affecting pork  
17 exports." Correct?

18 A. That is correct.

19 Q. And then in Paragraph 62 you wrote, "Net  
20 U.S. pork exports increased during 2000 through  
21 2020, this increase was not uniform."

22 Did I read that right?

23 A. You did.

24 Q. And then you say, "As Figure 6 above  
25 shows, net exports fell in some years (2009 and

1 2013-2015) before rebounding later."

2 Did I read that right?

3 A. You did.

4 Q. And then you wrote, "These temporary  
5 decreases in exports are often due to factors and  
6 events outside of the control of U.S. pork  
7 producers and pork processors."

8 Did I read that correctly?

9 A. Yes, you did.

10 Q. And it's in your report. I take it you  
11 agree with that statement?

12 A. Yes, I agree.

13 Q. And then you quote from the USDA. You  
14 say, "For example, in April 2009, the USDA  
15 reported:

16 "'Deterioration in the global economic  
17 situation, restrictive trade policies, the  
18 stronger U.S. dollar and changing market  
19 conditions, are among the reasons for falling  
20 demand in some major importing countries.'"

21 Did I read that right?

22 A. You did.

23 Q. And then you say, "This decline was  
24 transitory, and international meat trade rebounded  
25 in 2010, benefitting U.S." . . . "exporters."

1 opinion.

2 Q. Dr. Singer submitted a report in this  
3 matter. And he wrote -- this is a quote from his  
4 report. I'd like your reaction. He wrote, "A  
5 firm's decision to export is not itself evidence  
6 of a conspiracy."

7 Do you agree with that statement?

8 MR. FINLEY: Hold on. Objection. Is this  
9 document before the witness?

10 MR. SCHWINGLER: It is not.

11 MR. FINLEY: Okay.

12 A. I've never read Dr. Singer's report. I  
13 don't know what's in it. I don't have any  
14 particular reason to agree or disagree with that  
15 sentence. I've never seen it before.

16 Q. All right. So let's forget about  
17 Dr. Singer for a moment. I'm just going to ask  
18 for your reaction to the following statement,  
19 whether you disagree or agree.

20 The statement is, "A firm's decision to  
21 export is not itself evidence of a conspiracy."

22 Do you agree?

23 MR. FINLEY: Objection, form, calls for  
24 speculation.

25 A. Well, my report doesn't offer a specific

1 opinion along those lines.

2 But if the question was, would a firm's  
3 decision to export some specific quantity of  
4 widgets by itself be evidence of collusion, I  
5 think in the abstract I would say no.

6 There's obviously -- there's a lot -- the  
7 context would certainly matter. If that's the  
8 only thing I knew about the widget industry, that  
9 some firm had made a decision about how much to  
10 export and I didn't know anything else, I would  
11 say that -- I wouldn't particularly regard that as  
12 evidence of collusion.

13 Q. I'll give you another statement and you  
14 can agree or disagree.

15 The statement is, "A firm's individual  
16 decision to sell into foreign markets could be  
17 perfectly rational in a competitive environment."

18 Do you agree with that?

19 MR. FINLEY: Same objection. Is this  
20 referencing the Singer report?

21 MR. SCHWINGLER: It is a quote from the  
22 Singer report, but my question is not about the  
23 Singer report. It's whether the witness agrees  
24 with that statement.

25 MR. FINLEY: Then objection on the basis

1 of scope and expert stip to the extent that this  
2 may have been considered but not relied upon.

3 A. Well, I'll just say again, I've never read  
4 Dr. Singer's report. I don't know what's in it.  
5 I don't know anything about the context of any  
6 particular sentence that's in it.

7 But if -- just that sentence by itself and  
8 just thinking about some abstract widget industry,  
9 if that's the only thing I knew about the widget  
10 industry in the absence of any other facts about  
11 the structure of conduct about that industry, I  
12 wouldn't think that that would be particularly  
13 indicative of collusion.

14 Q. To analyze whether an export was  
15 indicative of collusion, you'd need to analyze the  
16 context behind that decision. Correct?

17 A. My report doesn't offer any opinions about  
18 exports in collusion. It's just not something --  
19 it's not an opinion I'm offering in my report.

20 Q. And you may have just answered my  
21 question, but if you'll bear with me. If you  
22 could turn to Paragraph 7. In 7 and 8 --  
23 actually, I'll just have you look at Paragraph 8,  
24 8 through 13, which summarizes your opinions.

25 A. If I could have just a moment to refresh

1 my recollection.

2 Q. Absolutely.

3 A. Okay. I've reread those paragraphs.

4 Q. And so first of all, am I correct that  
5 Paragraphs 8 through 13 summarize the opinions  
6 you're offering in this case?

7 A. Well, yes, subject to -- I'm sure you read  
8 it, but the second sentence in Paragraph 8  
9 specifically says, "The following summary does not  
10 reflect all of my findings and conclusions or all  
11 of the bases for those findings and conclusions."

12 Subject to that statement, then yes, this  
13 was described in my report in Subsection C as an  
14 overview of my opinions.

15 Q. And none of the items in Paragraphs 8  
16 through 13 refer to exports. Correct?

17 A. I believe that's correct. The word  
18 "exports" does not appear in Paragraphs 8 through  
19 13.

20 Q. And more generally, your report does not  
21 contain an analysis of whether economic evidence  
22 supports an inference that defendants increased  
23 their exports as part of the alleged conspiracy.  
24 Correct?

25 A. My report does not contain such an

1 opinion.

2 Q. If you look at Subsection III.B., which  
3 starts on page 66 of your report -- I believe  
4 that's III.B. Let me confirm. Yes.

5 Subsection III.B. on page 66. The header  
6 reads, "Defendants took actions that were against  
7 their independent self-interests but for the  
8 existence of a conspiracy." Correct?

9 A. Yes. That's what the heading says.

10 Q. And the section that follows identifies  
11 what you describe as actions against defendants'  
12 unilateral self-interest. Correct?

13 A. No, I wouldn't state it that way.

14 Q. How would you state it?

15 A. I would state it that it describes actions  
16 that the defendants took that were against their  
17 independent self-interests but for the existence  
18 of a conspiracy.

19 Q. And that section doesn't address export  
20 activity. Correct?

21 A. If I could have just a moment to refresh  
22 my recollection.

23 So I have quickly scanned Paragraphs 128  
24 to 201, which constitute the Subsection B, and I  
25 don't see any discussion of exports.



1 Q. So you don't in your report identify any  
2 export sale that you believe was against the  
3 seller's unilateral self-interest absent a  
4 conspiracy. Correct?

5 MR. FINLEY: Objection, form, calls for a  
6 legal conclusion.

7 A. Well, I don't see a discussion of that in  
8 Paragraphs 128 to 201.

9 Q. I know it's a lengthy document. But you  
10 don't recall any examples elsewhere in your  
11 report, sitting here today. Is that fair?

12 A. That is fair.

13 Q. And your report doesn't contain an  
14 estimate of the total volume of exports that were  
15 against the seller's unilateral self-interest  
16 absent a conspiracy. Correct?

17 A. I don't believe it does.

18 Q. And your opinions about class  
19 certification do not rely on any assumption or  
20 opinion about whether defendants actually exported  
21 pork against their unilateral self-interest absent  
22 a conspiracy. Correct?

23 MR. FINLEY: Objection to form, calls for  
24 a legal conclusion.

25 A. Yeah. I was going to say, it seems to be

1 Q. So, Dr. Williams, I'd like to spend some  
2 time on the production regression in your report.

3 And if you could turn to page -- so  
4 Exhibit 1, Paragraph 144, which is on page 72.  
5 And so I'd like to talk about -- well, let's just  
6 go sentence by sentence.

7 So first you write, "Defendant production  
8 can be influenced by non-collusive market  
9 conditions in addition to the alleged conspiracy."  
10 Is that right?

11 A. Yes. You read that correctly.

12 Q. And then you wrote, "For example,  
13 increasing consumer demand for pork over time  
14 could incentivize greater pork production."

15 Did I read that right?

16 A. Yes, you did.

17 Q. And then you say, "Consequently, an  
18 increase in industry-wide pork production does not  
19 constitute evidence inconsistent with the  
20 existence of the alleged conspiracy."

21 Did I read that correctly?

22 A. Yes, you did.

23 Q. And then you say, "The relevant question  
24 in this regard is whether or not actual pork  
25 production was lower than it would have been but

1 for the alleged conspiracy."

2 Did I read that correctly?

3 A. Yes, you did.

4 Q. Does your regression model answer that  
5 question?

6 A. Yes, it does. It answers other questions  
7 as well, but it answers that question.

8 Q. My understanding of your regression model  
9 is that the dependent variable is quarterly pork  
10 production net of net exports. Is that right?

11 A. Yes. I believe you're looking at  
12 Paragraph 151.

13 Q. Yes. So you're not -- your model is not  
14 analyzing slaughter levels. It's analyzing pork  
15 production net of net exports. Correct?

16 A. That is correct.

17 Q. So I'll ask the question again.

18 You wrote in your report, "The relevant  
19 question in this regard is whether or not actual  
20 pork production was lower than it would have been  
21 but for the alleged conspiracy."

22 Does your regression model measure actual  
23 pork production?

24 A. It measures exactly what's in  
25 Paragraph 151.

1 Q. Which is pork production net of net  
2 exports. Correct?

3 A. Correct.

4 Q. So in order to know whether actual pork  
5 production changed, you would first have to add  
6 the net exports back in. Correct?

7 MR. FINLEY: Objection, form, calls for  
8 speculation.

9 A. Well, I suppose one could do that. That's  
10 not what I've measured -- that's not what I've  
11 utilized as the dependent variable in the  
12 production regression.

13 Q. Is a better term for what you're using  
14 "domestic pork supply" as opposed to "actual pork  
15 production"?

16 MR. FINLEY: Objection to form.

17 A. I didn't use that phrase. I'm comfortable  
18 with the language that's in Paragraph 151.

19 Q. I'm asking -- sorry -- a different  
20 question.

21 When you say "The relevant question" -- in  
22 Paragraph 144, when you say, "The relevant  
23 question in this regard is whether or not actual  
24 pork production was lower than it would have been  
25 but for the alleged conspiracy," would it be more

1 consistent with your opinions and your work in  
2 this case to replace the phrase "actual pork  
3 production" with another phrase, whether it's  
4 "pork production net of net exports" or "domestic  
5 pork supply"?

6 I'm just trying to make sure I understand  
7 what you're really saying in Paragraph 144.

8 MR. FINLEY: Objection to form.

9 A. I don't have any reason to change the  
10 language in 144. As I said, I think the right  
11 dependent variable is the dependent variable  
12 specified in Paragraph 151.

13 Q. Okay. We'll get to that.

14 So you're, I guess, standing by the  
15 opinion that the relevant question is whether or  
16 not actual pork production was lower than it would  
17 have been but for the alleged conspiracy --

18 MR. FINLEY: Objection.

19 Q. -- if I'm understanding you correctly?

20 A. I don't have any particular reason right  
21 now to change what I stated in Paragraph 144.

22 And then, as I said, I believe that the  
23 relevant dependent variable for analyzing that is  
24 the dependent variable specified in Paragraph 151.

25 Q. The last sentence in Paragraph 144 says,

1 the expert stip to the extent this is calling for  
2 factors considered as opposed to information  
3 material to rely upon.

4 A. Well, if we go back for a moment to  
5 Paragraph 218 -- and I won't repeat the long  
6 answers I've just given you about the damages  
7 period.

8 But the benchmark period is going to be  
9 before the damages period. So it's going to be  
10 before January 1st, 2009.

11 And as I say in Paragraph 218 -- I'll just  
12 read here -- "For the benchmark period, I use all  
13 the available data for the period before  
14 January 2009. Specifically, data in the benchmark  
15 period used for my regression analysis covers the  
16 period January 2005 through December 2008."

17 Q. My question -- I understand the benchmarks  
18 are the same I believe for the two models.

19 But why did you only go back to 2005 for  
20 the production regression?

21 MR. FINLEY: Objection on the basis of the  
22 expert stip.

23 MR. SCHWINGLER: I'm asking him why he  
24 limited his benchmark to 2005. I think that's a  
25 fair question.

1 MR. FINLEY: Same objection.

2 A. So in Paragraph 218, again, it says, "For  
3 the benchmark period, I use all the available data  
4 for the period before January 2009. Specifically,  
5 data in the benchmark period used for my  
6 regression analysis covers the period January 2005  
7 through December 2008."

8 The variables in the regression -- in the  
9 production regression are the same as the  
10 variables in the overcharge regression, with the  
11 exception that the overcharge regression does add  
12 one variable, the Consumer Price Index.

13 My recollection is that that's as far back  
14 as I felt like the reliable available data were  
15 available.

16 Q. Why did you include 2008 in your benchmark  
17 period?

18 A. Well, let's --

19 MR. FINLEY: Same objection.

20 A. Paragraph 218, remember that I was -- I'll  
21 read it again.

22 "I was instructed by counsel to use the  
23 period January 1, 2009 through June 30, 2018, as  
24 the damages period."

25 And I'm not going to repeat -- I gave it

1 twice, roughly -- those long answers about why I  
2 thought there was both econometric support and  
3 evidentiary support for why I think that period  
4 makes economic sense to me.

5 But your question now is why would I  
6 include 2008 in the benchmark period. And the  
7 answer is, it precedes the damages period. So I  
8 consider it as likely untainted by anticompetitive  
9 conduct.

10 Q. Did hog producers on average make money in  
11 2008?

12 MR. FINLEY: Objection to form. Also  
13 objection on the basis of expert stip. And  
14 objection on the basis of scope.

15 A. Your question is really vague. Did they  
16 make money? Yes, they certainly had revenues.  
17 I'm not sure what you mean by "make money."

18 Q. Did the hog producers -- did the prices  
19 hog producers realized selling hogs in 2008 exceed  
20 their cost of producing hogs in that year?

21 MR. FINLEY: Objection on the basis of the  
22 expert stip.

23 A. My report doesn't offer an opinion about  
24 that.

25 Q. None of your opinions turn on whether hog



1 production was profitable in 2008. Correct?

2 MR. FINLEY: Objection, vague and  
3 ambiguous. Also object on the basis of expert  
4 stip.

5 A. My report doesn't offer an opinion about  
6 that. And one would also have to distinguish  
7 short-run profits, long-run profits, accounting  
8 profits, economic profits.

9 But at any rate, my report does not offer  
10 an opinion about the defendants' profits from the  
11 sale of pork products in 2008.

12 Q. Is the only reason you included 2008 in  
13 your benchmark period because it was the year  
14 before the alleged conspiracy began?

15 MR. FINLEY: Same objection.

16 A. So we'll go back to Paragraph 218. I'll  
17 read it again.

18 "I was instructed by counsel to use the  
19 period January 1, 2009 through June 30, 2018, as  
20 the damages period. For the benchmark period, I  
21 used all the available data for the period before  
22 January of 2009. Specifically, data in the  
23 benchmark period used for my regression analysis  
24 covers the period January 2005 through  
25 December 2008."

1 So as I said, the goal would be to  
2 identify a period of time for the benchmark that  
3 was unaffected by the disputed conduct.

4 And I believe that the econometric  
5 evidence and the production regression, the other  
6 evidence in the paragraphs I cited earlier, as  
7 well as the evidence in the complaint, supports  
8 the instruction I received about what period I  
9 should use as the damages period.

10 And then I believe it's appropriate to use  
11 as the benchmark period the period of time that  
12 just precedes the onset of the damages period and  
13 then working back from there.

14 Q. Other than the fact that 2008 just  
15 precedes the alleged damages period, you're not  
16 relying on any analysis of industry factors for  
17 market conditions in 2008 that, in your opinion,  
18 support using it as a benchmark for analyzing the  
19 production that came in the years to follow. Is  
20 that fair?

21 MR. FINLEY: Objection, asked and  
22 answered.

23 A. I don't think I'd agree with quite the way  
24 you're saying it.

25 What I testified earlier to was my report,

1 for example, does not contain an opinion that  
2 there was -- obviously I'm not going to repeat  
3 everything that's in Subsection III.B., which  
4 relates to actions against the defendants'  
5 unilateral self-interest in the absence of an  
6 agreement.

7 But my report -- maybe I'll state it in  
8 the alternative.

9 My report does not offer an opinion that  
10 2008 is contaminated by the disputed conduct. So  
11 I believe that 2008 is an appropriate year to  
12 include in the benchmark.

13 Q. And I'm not asking whether you think '08  
14 is contaminated by the disputed conduct. I'm just  
15 trying to understand what you're relying on in  
16 selecting your benchmark period.

17 So I understand it's a year before the  
18 alleged conspiracy started. I understand you have  
19 data available for that year.

20 Other than those two things, is there  
21 anything else about 2008 that you're relying on  
22 when you select it as part of your benchmark?

23 MR. FINLEY: Same objection.

24 A. Well, again, I'm not going to repeat the  
25 long answers that I've given in the last couple of

1 minutes.

2 But the -- I believe it's appropriate to  
3 include 2008 in the benchmark because it's not in  
4 the damages period. It precedes the damages  
5 period, precedes the period used, for example, in  
6 the production regression.

7 I won't go through all of them, obviously,  
8 but the two different sets of paragraphs I cited  
9 earlier about evidence about communications, the  
10 information that's in the complaint.

11 As I said, so far as I'm aware, it is  
12 appropriate in the context of the production  
13 regression and the overcharge regression to use --  
14 to consider 2008 as part of the benchmark period.

15 And as I said earlier, the goal would  
16 be -- is always in identifying a benchmark period  
17 to identify a period of time in which the disputed  
18 conduct was not present.

19 And so far as I know, the disputed conduct  
20 was either not present or certainly less present.  
21 Again, it's preferable from an econometric  
22 perspective if there's no disputed conduct in the  
23 benchmark period.

24 Q. Is your production regression sensitive to  
25 including 2008 in the benchmark period?

1 MR. FINLEY: Objection. And I'm  
2 definitely going to object on the basis of the  
3 expert stip here since this does seem to ask for  
4 preliminary work product or alternate calculations  
5 if they were made.

6 MR. SCHWINGLER: I'm going to be very  
7 clear about what I'm asking for. I'm not asking  
8 for preliminary models. I'm asking whether the  
9 model that he is offering is sensitive to  
10 inclusion of 2008 in the benchmark period. This  
11 is his opportunity to answer that question.

12 If you're going to instruct him not to  
13 answer, you can do that. But my question is not  
14 about preliminary work. It's about whether his --  
15 the work he is relying on is sensitive to that  
16 variable.

17 MR. FINLEY: And perhaps there are other  
18 ways he could answer this without reference to  
19 preliminary work. But it seems like one thing  
20 this -- the one salient thing this might call for  
21 is preliminary work.

22 Sorry. In other words, are you defining  
23 "sensitivity" in a way that doesn't include  
24 preliminary work, reference to preliminary work?

25 MR. SCHWINGLER: I want to know if he's

1 done a sensitivity check to see if including 2008  
2 in his benchmark period impacts the results in a  
3 way that is meaningful to the case.

4 MR. FINLEY: Are you asking him whether  
5 the sensitivity check is part of the report or  
6 whether -- just whether he's done it?

7 MR. SCHWINGLER: Quite obviously he  
8 doesn't disclose a sensitivity check. So if you  
9 want to instruct him not to give any information  
10 that isn't in his report, that's your  
11 interpretation of the expert protocol, and we will  
12 reserve our rights.

13 This is his opportunity to defend his  
14 work. I'm asking him if his model is sensitive to  
15 including 2008 in the benchmark.

16 Obviously I can't force you to allow him  
17 to answer. But my -- I'll restart with the  
18 question. I'll let you handle it as you see fit.

19 BY MR. SCHWINGLER:

20 Q. Dr. Williams, is your production  
21 regression sensitive to including 2008 in the  
22 benchmark period?

23 MR. FINLEY: And I will object based on  
24 the expert stip since this question seems to be in  
25 reference to preliminary work product and possible

1 preliminary calculations.

2 A. My --

3 MR. FINLEY: The witness may answer to the  
4 extent he has a view independent of that.

5 A. My report doesn't offer an opinion on  
6 that.

7 Q. So your opinions -- your opinion that the  
8 production regression you disclose in your report  
9 is an appropriate method for analyzing the impact,  
10 if any, of the conspiracy on pork production net  
11 of net exports does not rely on any sensitivity  
12 check related to including 2008 in the benchmark  
13 period. Is that correct?

14 MR. FINLEY: Objection.

15 A. I didn't say that. I said my report  
16 doesn't offer an opinion on that.

17 Q. Well, if your opinion that this is an  
18 appropriate model relies on a sensitivity check,  
19 we're entitled to know that. So that's my  
20 question.

21 Is your opinion that this model is  
22 appropriate, does that rely on a sensitivity check  
23 that you performed but did not disclose in the  
24 report?

25 MR. FINLEY: Objection, form, vague,

1 ambiguous.

2 A. No. My report shows all the work on which  
3 I'm relying.

4 Q. If defendants hadn't conspired to restrict  
5 pork production starting in 2009, what would have  
6 happened to hog prices during your damages period,  
7 as you define it?

8 MR. FINLEY: Objection, calls for  
9 speculation.

10 A. My report doesn't offer an opinion on  
11 that.

12 Q. Your report doesn't analyze but-for hog  
13 prices. Correct?

14 MR. FINLEY: Objection, may  
15 mischaracterize prior testimony.

16 A. That's not what I said.

17 Q. I'm not trying to characterize what you  
18 said. I'm asking you a question.

19 Does your report analyze what hog prices  
20 would have been but for the alleged conspiracy?

21 MR. FINLEY: Objection, vague, ambiguous.

22 A. Yes. If you're referring to the  
23 overcharge regression, that regression does  
24 produce results that bear on but-for prices of  
25 pork products.



1 Q. Pork products. My question is about hog  
2 prices. Does your report analyze what hog prices  
3 would have been but for the alleged conspiracy?

4 MR. FINLEY: Objection, vague, ambiguous.

5 A. I don't believe my report offers any  
6 opinions on that.

7 Q. And your report also doesn't offer any  
8 opinion on what hog production would have been but  
9 for the alleged conspiracy. Correct?

10 MR. FINLEY: Objection, form.

11 A. I believe that is correct. The production  
12 regression looks at what production would have  
13 been in the but-for world.

14 Q. Pork production, not hog production.  
15 Correct?

16 A. That's what's specified in Paragraph 151.

17 Q. And specifically pork production net of  
18 net exports. Correct?

19 A. That is correct. That is the dependent  
20 variable in the production regression that appears  
21 in Table 3.

22 Q. Let's take a look at Paragraph 147 of your  
23 report. So the last sentence of Paragraph 147  
24 says, "The empirical quantification of impact, if  
25 any, attributable to the alleged conspiracy

1 involves a comparison of actual quantities during  
2 the alleged conspiracy period with estimated,  
3 but-for quantities in the absence of the alleged  
4 conspiracy in that period."

5 Did I read that right?

6 A. Yes, sir.

7 Q. And by "actual quantities," are you  
8 referring to pork production net of net exports?

9 A. That is correct, since that is the  
10 dependent variable.

11 Q. In Paragraph 147, in the first sentence --  
12 sorry. Not in the first sentence. In the  
13 sentence immediately above -- I apologize for  
14 working backwards.

15 So you write, "The dummy variable." Do  
16 you see that sentence?

17 A. Yes, sir.

18 Q. "The dummy variable multiple regression  
19 methodology implements the comparison described  
20 above, in that it relies on comparing  
21 '[quantities] in the impact period to available  
22 [quantities] before and/or after the alleged  
23 period of impact,' while controlling for other  
24 factors that affect quantities, e.g., hog costs or  
25 adverse economic conditions."

1 A. My report doesn't offer an opinion about  
2 that.

3 Q. You would agree that in order to make  
4 pork, you have to have a hog. Correct?

5 A. That would be my understanding.

6 Q. So do you dispute that hog supply impacts  
7 the quantity of pork produced in the United  
8 States?

9 MR. FINLEY: Objection, form.

10 A. I don't have a specific reason to dispute  
11 that. I'm just correctly noting that my report  
12 doesn't offer an opinion.

13 Q. And your production regression does not  
14 control for changes in hog supply, does it?

15 MR. FINLEY: Objection, form.

16 A. Well, it controls for a number of factors  
17 that affect -- related to that.

18 It controls for hog costs. It controls  
19 for the plant costs of pork processing. It  
20 controls for the piglet loss rate. It controls  
21 for swine flu.

22 So it controls for a number of factors,  
23 all the factors that are listed in Table 3. It  
24 doesn't have a specific variable called "supply of  
25 hogs."

1 Q. You don't use USDA data on how many hogs  
2 were actually produced between 2005 and whatever  
3 the year was, 2020, as an input into your  
4 production regression, do you?

5 A. That is correct. There's no independent  
6 variable of what -- of the type that you're  
7 describing now.

8 Q. There's also no independent variable that  
9 accounts for changes in hog prices. Correct?

10 MR. FINLEY: Objection, form.

11 A. Yes. There's a variable -- there are  
12 related variables, but there's not a variable  
13 that's specifically called "hog prices."

14 Q. And Paragraph 25 of your report -- sorry  
15 to jump around. It's on this topic.

16 MR. SCHWINGLER: It's on page 12, Caylob.

17 Q. So in Paragraph 25 you write, "The cost of  
18 acquiring live hogs -- be it from a packer-owned  
19 farm, a contract farm, or the public market -- is  
20 the most significant part of packing and  
21 processing operations, accounting for  
22 approximately 70% of the total cost."

23 Did I read that correctly?

24 A. Yes, sir.

25 Q. And you would agree with me that in

1 circumstances where a packer buys a hog from a  
2 third-party producer, its cost of acquiring that  
3 hog would be the price it paid for the hog.

4 Correct?

5 A. That sounds right.

6 Q. Does the total U.S. sow inventory affect  
7 the quantity of pork produced in the United  
8 States?

9 MR. FINLEY: Objection, calls for  
10 speculation.

11 A. My report doesn't offer an opinion on  
12 that.

13 Q. And your production regression does not  
14 include a control variable for sow inventory.  
15 Correct?

16 A. That is correct.

17 Q. Does the number of pigs imported from  
18 Canada affect the quantity of pork produced in the  
19 United States?

20 A. My report does not offer an opinion on  
21 that.

22 Q. And your production regression does not  
23 include a control variable to address changes in  
24 pigs imported from Canada. Correct?

25 A. That is correct.

1 Q. Does overseas demand for U.S. pork affect  
2 the quantity of pork produced in the United States  
3 net of net exports?

4 A. My report does not offer an opinion on  
5 that. No.

6 Q. Your production regression does not  
7 include a control variable that addresses changes  
8 in overseas demand for U.S. pork. Correct?

9 A. That is correct.

10 Q. Do changes in pork supply overseas, such  
11 as a disease outbreak in China, impact the  
12 quantity of pork exported out of the United States  
13 to other countries?

14 MR. FINLEY: Objection, form.

15 A. My report does not offer an opinion on  
16 that.

17 Q. And your report does not include a control  
18 variable to address changes in overseas pork  
19 supply. Correct?

20 A. That is correct.

21 MR. FINLEY: Objection.

22 Q. Do changes in currency exchange rates  
23 impact or affect the quantity of pork exported to  
24 other countries?

25 MR. FINLEY: Same objection.

1 A. My report does not offer an opinion on  
2 that.

3 Q. And your production regression does not  
4 include a control variable to address changes in  
5 exchange rates. Correct?

6 A. That is correct.

7 Q. Do changes in trade agreements between the  
8 United States and other countries affect the  
9 quantity of pork exported to other countries?

10 MR. FINLEY: Objection, form.

11 A. My report does not offer an opinion on  
12 that.

13 Q. Your production regression does not  
14 include a control variable to address changes in  
15 trade agreements over time. Correct?

16 A. That is correct.

17 Q. If another country such as Russia lifted a  
18 ban on pork imported from the United States, would  
19 that impact -- sorry -- would that affect the  
20 quantity of pork exported to that country?

21 MR. FINLEY: Objection, calls for  
22 speculation.

23 A. My report doesn't offer an opinion on  
24 that.

25 Q. And your production regression doesn't

1 include a control variable for changes to foreign  
2 restrictions on pork imported from the U.S.

3 Correct?

4 MR. FINLEY: Objection.

5 A. That is correct.

6 Q. I'm happy to go through each of them  
7 again, if that would be helpful.

8 But am I correct that each of the items  
9 that I've gone through and listed --

10 And I'll just list them: hog supply, hog  
11 prices, sow inventory, pigs imported from Canada,  
12 overseas demand for U.S. pork, currency exchange  
13 rates, changes in trade agreements, and import  
14 bans.

15 -- is it fair to say that you don't  
16 include control variables for those factors in  
17 your overcharge regression either?

18 MR. FINLEY: Objection, form.

19 A. That is correct.

20 Q. Let's talk about hog costs for a minute.  
21 And if you want to turn back to Paragraph 153. I  
22 don't know if I'll have questions on that  
23 paragraph, but I know that's where we were.

24 What did you use as a -- as a proxy for  
25 the cost of raising a hog, for purposes of your



1 regressions in this case?

2 A. I'll read the second sentence in  
3 Paragraph 153.

4 "I obtained monthly data on estimated  
5 costs of producing hogs from farrow to finish  
6 (birth to 270 lbs) from Iowa State University  
7 (ISU) for the period from January 2004 to  
8 September 2021."

9 So the data came from Iowa State. And as  
10 it's described in the rest of the paragraph, "The  
11 total costs of production include feed and  
12 non-feed costs. Feed costs cover the costs of  
13 corn, soybean meal, dried distiller grain,  
14 complete feeds and other ingredients, and feed  
15 processing. Nonfeed costs are mainly on variable  
16 costs, fixed costs, and operating interests."

17 Q. You used this variable in your overcharge  
18 regression as well?

19 A. Yes, sir.

20 Q. In both the production regression and the  
21 overcharge regression, did you use a three-month  
22 moving average for that Iowa State data?

23 A. I believe that's correct.

24 Q. Would you agree with me that changes in  
25 corn prices impact hog prices?

1 MR. FINLEY: Objection, form.

2 A. There's no specific study of the  
3 relationship between corn prices and hog prices in  
4 my report.

5 Q. Does the profitability of raising hogs  
6 impact hog supply?

7 MR. FINLEY: Objection, form.

8 A. My report doesn't offer an opinion on  
9 that.

10 Q. Your report contains no analysis of hog  
11 producer margins between 2009 and 2018. Correct?

12 A. That is correct.

13 Q. And it also doesn't analyze hog producer  
14 margins before 2009 either. Correct?

15 A. That is correct.

16 Q. And your report contains no analysis of  
17 whether hog producer margins affected hog supply.  
18 Correct?

19 A. That is correct. My report does not offer  
20 an opinion on that.

21 Q. Your report offers no opinion on whether  
22 hog producer margins affected pork prices either.  
23 Correct?

24 A. That is correct. My report does not offer  
25 such an opinion.

1 Q. And I should add that the list of  
2 variables, there's no control variable in either  
3 your production regression or your overcharge  
4 regression that accounts for changes in producer  
5 returns or margins for hog production. Correct?

6 MR. FINLEY: I object to form.

7 A. I believe that's correct. I think  
8 "producer returns" is a little vague. But there's  
9 no variable that's looking at hog producers'  
10 profits in those two regressions.

11 Q. Let's go to Paragraph 151. I know you've  
12 touched on this before. But just to level set the  
13 four-year production regression, the dependent  
14 variable is quarterly pork production net of net  
15 exports. Correct?

16 A. That is correct.

17 Q. And is it fair to say if exports go up,  
18 all else equal, pork production net of net exports  
19 will go down?

20 A. That sounds right. Obviously the  
21 important thing is the "all else equal."

22 Q. Just basically getting at, for a given  
23 level of slaughter, if exports go up the dependent  
24 variable in your regression will go down, assuming  
25 everything else stays constant?

1 A. I believe that's correct.

2 Q. And that's true regardless of which  
3 product is being exported. Correct?

4 MR. FINLEY: Objection, form.

5 A. Yes. Because the USDA is looking at all  
6 pork products.

7 Q. The fact that your production net of net  
8 exports will go down, all else equal, if exports  
9 go up is also true regardless of the reason why  
10 exports increased. Correct?

11 MR. FINLEY: Same objection.

12 A. I think what you're describing is just a  
13 reference here.

14 Q. Are you offering an opinion that export  
15 sales are made from pork produced exclusively for  
16 overseas customers?

17 MR. FINLEY: Objection, calls for  
18 speculation.

19 A. My report doesn't offer such an opinion.

20 Q. Suppose Smithfield breeds a sow tomorrow.  
21 Are you offering an opinion of whether that sow is  
22 being bred to produce hogs to make pork for  
23 domestic production or exports or either?

24 MR. FINLEY: Same objection.

25 A. My report doesn't offer any opinions about

1 remember exactly what kind of regression model we  
2 used. I don't see anything in the paragraph you  
3 just read that would seem to conflict with my  
4 report in this case.

5 Q. And the sentence I want to focus on begins  
6 with, "The difference."

7 "The difference between prices in the  
8 damages period and the benchmark period is  
9 commonly referred to as the overcharge."

10 And is that consistent with the approach  
11 you've taken in this case?

12 A. Well, it's not really -- I'm not trying to  
13 quibble. You used the word "approach." It's  
14 really just a word you're talking about. It is  
15 commonly referred to as "the overcharge."

16 I mean, I did title Table 4 in my report.  
17 I didn't -- I gave the title of it as "Overcharge  
18 Regression Results." I think it's consistent with  
19 that.

20 Q. Yes. So when we look at Table 4 of your  
21 report, the overcharge that you're reporting is  
22 the difference between prices in the damages  
23 period -- it's a comparison of prices in the  
24 damages period to prices in the benchmark period,  
25 obviously with some controls baked in. Correct?

1 A. No. That's not really the right way to  
2 say it.

3 It's looking at data in the benchmark  
4 period and the damages period and then it's using  
5 a dummy variable to indicate the alleged damages.  
6 And then the regression is calculated -- I'm  
7 sorry. I'm hearing an echo.

8 Q. So am I.

9 MR. SCHWINGLER: If there's anybody who  
10 needs to go on mute, please do.

11 A. Perhaps you could restate the question?  
12 Sorry. I have got distracted by the echo.

13 Q. My question is, when you refer to an  
14 overcharge in your overcharge regression, at a  
15 high level, is that a comparison between the  
16 prices in the damages period and the prices in the  
17 benchmark period?

18 A. You know, that's a -- it's not wrong to  
19 say that. It's a little confusing because the  
20 overcharge regression uses data from both periods.

21 And in particular, it uses the observed  
22 values of the independent variables in both the  
23 benchmark period and the damages period, but then  
24 it -- and again, this is all very standard. It  
25 uses the -- in the regression I've used, just a

1 dummy variable regression, it used a single dummy  
2 variable to ask, you know, is there, in fact, a  
3 statistically significant difference between  
4 actual prices and but-for prices.

5 But it's a little -- if somebody just  
6 said, well, can you measure the overcharge by  
7 simply comparing prices in the benchmark period to  
8 prices in the damages period, that's a little too  
9 simplistic.

10 Q. I'm not trying to overly simplify. I'm  
11 just trying to understand, when you run an  
12 overcharge regression like this, what your results  
13 tell you is, as this article states, "The  
14 difference between prices during the damages  
15 period and the bench period is commonly referred  
16 to as the overcharge."

17 It's the difference in price between those  
18 two periods after controlling for the other  
19 variables.

20 MR. FINLEY: Objection to form.

21 Q. Is that correct?

22 A. I think that's overly -- look, we were  
23 writing this article for a law review. It's not  
24 the way I would write it in an economics journal.

25 It's naive to say that the overcharge can

1           It uses data from both periods, utilizing  
2           in particular the methodology that's described in  
3           the sources I list in Footnotes 214 and 215.

4           So that would be the "ABA Section of  
5           Antitrust Law," "Proving Antitrust Damages: Legal  
6           and Economic Issues, Chapter 6," as well as the  
7           article as I mentioned earlier by Professors  
8           McCrory and Rubinfeld called "Measuring Benchmark  
9           Damages in Antitrust Litigation." That was  
10          published in the "Journal of Econometric Methods."

11          It's also -- the same dummy variable  
12          methodology is discussed in the ABA Section of  
13          Antitrust Law in a book called "Econometrics:  
14          Legal, Practical, and Technical Issues."

15          So this is a very standard dummy variable  
16          model that is utilizing data from both the  
17          benchmark period and the damages period and asking  
18          the question, is there a statistically significant  
19          difference between actual and but-for prices in  
20          that period, namely January 2009 through  
21          June 2018, controlling for all of the variables  
22          that appear in Table 4?

23          That's what the regression is testing.  
24          And the answer is, in the regression as reported  
25          in Table 4, yes, there is a statistically



1 significant difference between those actual and  
2 but-for prices in the period January 2009 through  
3 June 2018. And in percentage terms, the common  
4 overcharge is 10.3 percent.

5 Q. Do you disagree with the statement that a  
6 dummy variable regression methodology relies on  
7 comparing prices in the impact period to available  
8 prices before and/or after the alleged period of  
9 impact?

10 MR. FINLEY: Objection, form.

11 A. No. It's a little oversimplified. But  
12 certainly that's part of it. It's using data from  
13 both a benchmark period -- and there may be more  
14 than one benchmark period. There's some times  
15 people use an after period as well. Mine uses a  
16 before, during model.

17 Q. And I would hope you wouldn't disagree  
18 with that because that's a direct quote from your  
19 report in Paragraph 206.

20 All I'm trying to establish is that the  
21 regression, at a high level, is a comparison of  
22 prices in one period to prices in another while  
23 controlling for other factors that affect prices  
24 other than the conspiracy.

25 Do we have a disagreement on that basic

1 concept?

2 MR. FINLEY: Objection, form.

3 A. Yeah. I mean, I've answered this three  
4 times now.

5 But as I've said, I don't specifically  
6 disagree with the way you're phrasing it. It  
7 would be naive and incorrect to simply say that  
8 the overcharge can be measured directly by  
9 comparing prices in the before period to prices in  
10 the during period. That would not be correct.

11 But it certainly is correct that the  
12 regression utilizes data from both a benchmark  
13 period and a damages period, in the context of  
14 this multivariate regression, with a dummy  
15 variable for the alleged damages period.

16 And it's absolutely correct that it  
17 utilizes data and relies on data from both the  
18 benchmark period and the damages period.

19 Q. You stand by the statement in  
20 Paragraph 206 of your report. Correct?

21 MR. FINLEY: Objection, form.

22 A. Could you -- I believe so. But could you  
23 just show me the sentence you're talking about?

24 Q. It's page 99. Let's go to Exhibit 1,  
25 page 99, Paragraph 206.

1 pork production at different periods of time  
2 within the years 2009 to June 2018?

3 MR. FINLEY: Objection, form, vague,  
4 ambiguous.

5 A. My report doesn't offer any opinion on  
6 that.

7 Q. So you have no opinion one way or the  
8 other on whether the conspiracy could have had  
9 different impacts at different times within the  
10 damages period?

11 MR. FINLEY: Hold on. Objection, form,  
12 vague, ambiguous, may mischaracterize prior  
13 testimony.

14 A. My report doesn't offer any opinions on  
15 that.

16 Q. So your interpretation of your overcharge  
17 regression I take it does not rely on any  
18 assumptions or opinions about whether defendants'  
19 conduct had different impacts at different points  
20 in time in the alleged conspiracy. Correct?

21 MR. FINLEY: Same objection.

22 A. Yes. I think that's correct. My -- the  
23 overcharge regression, as it says in Paragraph 12,  
24 assumes that the allegations in the complaint are  
25 true.

1 And then it asks the question as to  
2 whether or not there is a difference between the  
3 actual prices and the but-for prices in the  
4 alleged damages period January 2009 through  
5 June 2018.

6 And I've concluded that the answer to that  
7 question is yes.

8 Q. If you look at page 149 in your report,  
9 this is in your appendix of documents relied upon.

10 There is an article about halfway down the  
11 page from Dr. Rubinfeld, contained within the  
12 "Reference Manual on Scientific Evidence." Do you  
13 see that?

14 A. Yes, I see that.

15 Q. Page 322 of that chapter, Dr. Rubinfeld  
16 wrote, "The issue of robustness, whether  
17 regression results are sensitive to slight  
18 modifications and assumptions, e.g., that the data  
19 are measured accurately, is of vital importance."

20 Do you agree with that statement?

21 MR. FINLEY: Objection.

22 A. I don't have his article in front of me  
23 and I don't know the exact context in which he's  
24 writing that. It doesn't sound -- it sounds  
25 plausible to me.

1 Q. And I can't remember. I know I asked you  
2 these questions about your production regression.  
3 I'm drawing a blank on whether I asked as to the  
4 overcharge. So apologies if we're double-dipping  
5 here.

6 Did you run any sensitivity checks on the  
7 overcharge regression that you report -- that you  
8 disclose in your report?

9 MR. FINLEY: Sure. And so the question  
10 has changed. I'll object on the basis of expert  
11 stip to the extent this is calling for calculation  
12 that is not shown in the report or relied upon.

13 A. So the only overcharge regression that I'm  
14 showing in my report is the one shown in Table 4.

15 Q. And you're not defending this overcharge  
16 report -- the overcharge regression that you  
17 disclose in your report on the basis that it is  
18 not sensitive to slight modifications and  
19 assumptions. Is that fair?

20 MR. FINLEY: Objection, form.

21 A. I would say that what I'm relying on are  
22 the analyses that I've undertaken to perform the  
23 overcharge regression results. And that's -- and  
24 all of the bases for that, all of the facts, all  
25 of the data, all the modeling, that is all

1 So the pass-through elasticity -- do you  
2 see that in Table 5? For example, for REDACTED, do  
3 you see the REDACTED?

4 Q. Yes.

5 A. So that's the number that comes out of the  
6 regression. So remember, we're regressing -- it  
7 is a log-log regression. So it's an elasticity.

8 So the regression is giving us back that  
9 REDACTED number. We then multiply -- to get the  
10 pass-through rate, we multiply the pass-through  
11 elasticity by that variable called the price-cost  
12 ratio.

13 So as I said earlier, if we take the  
14 pass-through elasticity for REDACTED of REDACTED,  
15 multiply it by the cost-price ratio of  
16 REDACTED percent, that's what gives us the pass-through  
17 rate of REDACTED percent.

18 Q. So let's just stay with Sysco for a  
19 minute. If the average direct -- sorry.

20 If the direct purchaser overcharge from  
21 your overcharge regression is REDACTED percent and  
22 Sysco has a pass-through elasticity of REDACTED and a  
23 pass-through rate of REDACTED percent, would you  
24 expect to see overcharges of close to REDACTED percent  
25 for REDACTED customers?

1 MR. FINLEY: Objection, form.

2 MS. JONES: Objection.

3 A. I apologize. I got a little bit lost in  
4 your question.

5 Could you read it back, please?

6 Q. If the direct purchaser overcharge from  
7 your overcharge regression is REDACTED percent,  
8 REDACTED pass-through elasticity is just under REDA  
9 pass-through rate is just over REDACTED percent, would  
10 you expect to see an overcharge for REDACTED  
11 customers of in the neighborhood of REDACTED percent?

12 MR. FINLEY: Objection, form.

13 COUNSEL: Objection to form.

14 A. I think the short answer is yes. That is  
15 the estimated pass-through rate.

16 Again, if we look at the last sentence in  
17 Paragraph 256, the "estimated pass-through rates  
18 can be multiplied by the estimated overcharge  
19 percentages" -- I see I put an S on that. It  
20 really just should have been singular. You were  
21 correct. I was referring to the REDACTED "discussed  
22 above to determine the overcharge percentages for  
23 CIIPP Class Members."

24 So that's the implication of the  
25 pass-through rate for REDACTED

1 Q. There were three distributors where you  
2 applied your overcharge regression model to the  
3 data for those specific distributors. Correct?

4 MR. FINLEY: Objection, form.

5 A. Yeah. I believe you're referring to --  
6 we're now on page 122, in Romanette iii, which  
7 says, "Common impact regressions."

8 And so I believe you're referring to the  
9 regressions that are in Paragraphs 271, 272, and  
10 273.

11 Q. That's correct. I may have been able to  
12 frame it more artfully.

13 But what you say in Paragraph 269, "To  
14 test whether all or virtually all CIIPP Class  
15 Members paid higher prices for pork products  
16 during the damages period than they would have  
17 paid but for Defendants' alleged conspiracy, I  
18 apply my overcharge regression model described in  
19 Section IV.A to distributors with sufficient sales  
20 data to estimate overcharges. These distributors  
21 are REDACTED, REDACTED, and REDACTED." Is  
22 that right?

23 A. Yes. You read that correctly.

24 Q. When you say "I apply my overcharge  
25 regression model to those three distributors,"



1 what does that mean?

2 A. Well, I mean, I think the words are pretty  
3 clear. I don't know how else to say it. I  
4 applied the overcharge regression model that we  
5 looked at in Table 4 to the individual  
6 distributors, one at a time: REDACTED,

7 REDACTED and was REDACTED.

8 Those distributors had information that  
9 allowed me to look at the sales to individual  
10 customers. And so that's part of my analysis that  
11 appears in Section IV.C that is common impact  
12 analysis. So that's what I mean by applying the  
13 overcharge regression model in Section IV.A.

14 And of course, as you are aware, we  
15 provided you with all of our data and stated code.  
16 So I would hope there would be no confusion about  
17 what exactly these regressions are.

18 Q. No confusion. I'm just trying to make  
19 sure we're on the same page for some questions.

20 Just so I understand, when you apply your  
21 regression model to REDACTED, for example,  
22 does that mean the prices REDACTED customers  
23 paid are the -- is the dependent variable as  
24 opposed to all prices by all customers?

25 A. I think I understand your question. I

1 And their quote out of their Michigan Law  
2 Review article was, "modern cartels are more  
3 focused on monitoring, communication, and  
4 redistribution so as to prevent cartels" -- I'm  
5 sorry -- "so as to prevent breakdowns in cartel  
6 discipline than on some punishment."

7 Q. In order to successfully monitor and  
8 punish noncompliance with a cartel, does the  
9 information the members of the cartel use for  
10 monitoring have to be accurate?

11 MR. FINLEY: Objection, form, lack of  
12 foundation, calls for speculation.

13 A. My report doesn't offer a specific opinion  
14 about that.

15 Remember that the point to this whole  
16 discussion is that -- remember we're in section --  
17 that we're in Subsection III.B. of the report,  
18 which asks the question, did the defendants take  
19 actions that were against their unilateral or  
20 independent self-interest but for the existence of  
21 a conspiracy.

22 So the analysis that's in these paragraphs  
23 is about that. It's about did the firms in fact  
24 engage in conduct that will be against their  
25 unilateral self-interest but for the existence of

1 a conspiracy.

2 The analysis in these paragraphs is not  
3 about the optimal way to run a cartel. And my  
4 report doesn't have any specific opinions about  
5 the optimal mechanisms firms use to run cartels  
6 other than, as I said, it generally -- this  
7 discussion that we're looking at right now in  
8 Paragraph 186 about generally what do cartels  
9 attempt to do.

10 And again, with the important contribution  
11 from Professor Kovacic, et al., about what modern  
12 cartels attempt to do.

13 Q. You're not offering an opinion that  
14 Agri Stats in fact facilitated monitoring and  
15 enforcement by the defendants in this case. Is  
16 that fair?

17 MR. FINLEY: Objection, form, may  
18 mischaracterize prior testimony.

19 A. I don't believe my report offers an  
20 opinion that says that. The discussion of  
21 Agri Stats really is in the vein I just described  
22 earlier. It's about whether or not there's  
23 evidence that the firms took actions that were  
24 against their unilateral self-interest in the  
25 absence of an agreement.

1 Q. Is it your opinion that Agri Stats  
2 facilitated collusion between defendants?

3 MR. FINLEY: Objection, form, scope.

4 A. My report doesn't offer a specific opinion  
5 that says that.

6 Again, we talked about Paragraph 183. So  
7 whether or not someone would regard 183 as  
8 evidence that Agri Stats facilitated an alleged  
9 agreement, I suppose that would be up to the  
10 person reading Paragraph 183. I certainly stand  
11 by what's in Paragraph 183.

12 Q. You say in Paragraph 185, you refer to  
13 "information sharing through Agri Stats."

14 And then the second sentence says, "Such  
15 information sharing can facilitate collusion  
16 because the detailed knowledge that Defendants  
17 gained regarding their competitors' pricing and  
18 production decisions is the type of information  
19 that would be useful for coordinating price  
20 increases and/or production decisions, including  
21 production cuts, among firms."

22 Did I read that correctly?

23 A. I believe so.

24 Q. So can you give me an example in this case  
25 where two or more defendants used information from

1 Agri Stats to coordinate their production of pork?

2 A. I don't believe --

3 MR. FINLEY: Objection, form.

4 A. I don't believe my report offers such an  
5 opinion. Again, the point to these paragraphs is  
6 to ask the question did -- particularly in the  
7 context of information exchanges related to  
8 Agri Stats, did the firms engage in conduct that  
9 was against their unilateral self-interest in the  
10 absence of an agreement. That's what's being  
11 discussed here.

12 My report doesn't offer a specific opinion  
13 about the -- about your specific question.

14 Q. So when your report says Agri Stats would  
15 be useful for coordinating production decisions,  
16 you're not -- that's a sort of hypothetical  
17 observation? You're not opining that in fact  
18 defendants used Agri Stats to coordinate  
19 production?

20 MR. FINLEY: Objection, form.

21 A. I don't know that I'd agree with the way  
22 you're stating that.

23 The whole discussion of Agri Stats is, in  
24 my opinion, demonstrating that the firms --  
25 including Agri Stats itself, as discussed in

1 double-check the IBISWorld report to see what the  
2 first date is, what the first year is in their  
3 data.

4 Q. I'd like you to turn to -- let's set aside  
5 Exhibit 1 and take a look at Exhibit 2, which is  
6 the complaint. And I'd ask you to look at  
7 Paragraph 85.

8 Paragraph 85, which is on page 31, reads,  
9 "Each of the Defendants further controls the  
10 manner in which pork is processed and has the  
11 ability to restrict and reduce supply through a  
12 number of means including capacity reductions,  
13 controlling slaughter rates, and exports."

14 Did I read that right?

15 A. Yes, you did.

16 Q. Are you assuming that allegation to be  
17 true?

18 MR. FINLEY: Objection, form.

19 A. Yeah. I don't have a specific reason for  
20 disagreeing with it.

21 Q. Do you have an understanding of what the  
22 term "controlling slaughter rates" refers to?

23 A. I'm not sure other than number of hogs  
24 slaughtered per day, for example. I'm not sure  
25 what else it would be referring to, the rate at

1 which hogs are being slaughtered over time.

2 Q. Paragraph 85 also refers to "capacity  
3 reductions." What does it mean for a defendant to  
4 reduce capacity?

5 MR. FINLEY: Objection, form.

6 A. My report doesn't talk about capacity  
7 reductions. I'm not sure exactly what it would  
8 mean here to reduce capacity. I mean, it could be  
9 mothballing a plant would be a capacity reduction.  
10 As I said, my report doesn't talk about that.

11 Q. Your report contains no analysis of what  
12 slaughter capacity would have been but for the  
13 alleged conspiracy. Is that correct?

14 MR. FINLEY: Objection to form.

15 A. Yeah. If we look at Table 2 in my report  
16 on page 37, that has the "U.S. Daily Hog  
17 Slaughter, Capacity 2009-2020, by Company."

18 There's no -- there's not another table in  
19 my report that has different but-for values for  
20 hog slaughter capacity.

21 Q. For purposes of analyzing the impact of  
22 the alleged conspiracy on pork prices, are you  
23 assuming that but for the conspiracy, defendants  
24 would have increased their slaughter capacity more  
25 than they did?

1 MR. FINLEY: Objection, form, vague,  
2 ambiguous, calls for a legal conclusion, calls for  
3 speculation.

4 A. Well, I'll just come back again to the  
5 first sentence in Paragraph 12. "For the purpose  
6 of estimating overpayments, if any, caused by  
7 Defendants' alleged conspiracy, I have assumed  
8 that the allegations in the Complaint are true."

9 And then, of course, that leads to the  
10 analysis that we've talked about at length today  
11 in Paragraphs 205 through 226 and the overcharge  
12 regression in Table 4.

13 So that, again, as any damage expert must,  
14 I'm assuming that the plaintiffs' claims are  
15 correct as they pertain to the alleged conspiracy.

16 So there's no -- there's no -- for  
17 example, there's no capacity variable in the  
18 overcharge regression.

19 But again, I do agree that I am assuming,  
20 as I said, as any damage expert must, that the  
21 plaintiffs' claims as they pertain to the alleged  
22 conspiracy are true.

23 Q. Are you assuming that defendants  
24 restricted slaughter capacity as part of the  
25 conspiracy?



1 to purchase \$50 million of pork products derived  
2 from sows as a means of reducing the national herd  
3 and stabilizing pork prices?

4 MR. FINLEY: Objection to form. Also  
5 objection on the basis of the expert stipulation.

6 A. I don't specifically remember that right  
7 now. It's certainly not something I'm relying on.

8 Q. Do you view actions by the USDA to be part  
9 of a conspiracy? Let me ask it differently.

10 Are you -- do you understand -- are you  
11 assuming for purposes of your analysis that  
12 actions by the USDA are part of a conspiracy?

13 MR. FINLEY: Objection, form, calls for a  
14 legal conclusion, calls for speculation, lack of  
15 foundation.

16 A. I don't recall the complaint alleging that  
17 the USDA was part of the alleged conspiracy. So  
18 unless I'm misremembering it, I think the answer  
19 to your question would be no.

20 Q. Your report contains no analysis of  
21 whether actions by the USDA to reduce sow  
22 inventories had any impact on pork prices during  
23 the damages period. Correct?

24 MR. FINLEY: Objection, form, lack of  
25 foundation, vague, ambiguous, may call for a legal

1 conclusion.

2 MR. SCHWINGLER: Let's take those one at a  
3 time. What's vague about my question?

4 MR. FINLEY: It's unclear what actions  
5 we're talking about, supposed actions by the USDA.

6 MR. SCHWINGLER: I'm asking whether his  
7 report contains analysis of any actions by the  
8 USDA. Let me ask it in a nonleading way.

9 Q. Dr. Williams, does your report contain any  
10 analysis of actions by the USDA related to sow  
11 inventories or pork prices?

12 A. I don't specifically recall that. If  
13 there were actions taken by the USDA that  
14 affected, for example, pork production, the  
15 dependent variable would pick that up in the  
16 production regression.

17 But I don't -- and I don't have time to  
18 reread the whole report right now. But I don't  
19 recall anything in the report about a specific  
20 USDA policy, for example, that's analyzed in my  
21 report as pertains to hog production. I don't  
22 recall them.

23 Q. What's the --

24 MR. FINLEY: If I may ask, what's the time  
25 on the record? I think we're pretty close to the

1 end.

2 THE VIDEOGRAPHER: 1 hour and 18 minutes  
3 on this session.

4 MR. FINLEY: What's the total, if I may  
5 ask?

6 THE VIDEOGRAPHER: Two more minutes for  
7 seven hours on the record.

8 MR. SCHWINGLER: Two more minutes for  
9 seven?

10 MR. FINLEY: Uh-hmm.

11 THE VIDEOGRAPHER: Sorry. It's one,  
12 eighteen. So it's been seven hours on the record.

13 MR. SCHWINGLER: Let's just go off the  
14 record for a second. I want to make sure we're  
15 straight on this.

16 THE VIDEOGRAPHER: The time is -- sorry.  
17 The time is 4:09. We're going off the record.

18 (Off the record 4:09 p.m. to 4:10 p.m.)

19 THE VIDEOGRAPHER: The time is 4:10, and  
20 we are back on the record.

21 MR. SCHWINGLER: So we've reached our  
22 seven hours, Dr. Williams. I'm not going to have  
23 any other questions for you.

24 I am going to note for the record  
25 defendants reserve their rights as to plaintiffs'